

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**JAMES FELLOWS,**

Plaintiff,

v.

**STATE OF TEXAS,**

Defendant.

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Civil Action No. **3:21-CV-1647-L-BN**

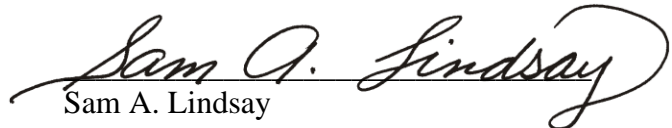
**ORDER**

The Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 8) was entered on August 4, 2021, recommending that this action be dismissed without prejudice for failure to prosecute and comply with a court order under Federal Rule of Civil Procedure 41(b). On August 23, 2021, Plaintiff filed a response to the Report “warning . . . of the consequences of your actions, if my case is NOT seen” and stating that he “will be expecting a response . . . in 10 days.” Resp. 1 (Doc. 9). This response, however, does not contain any valid objection to the Report and once again fails to cure the deficiency identified by the magistrate judge. Accordingly, even construing the response as an objection, it is without merit and **overruled**.

Having considered the file, record in this case, and Report, and having conducted a de novo review of that section of the Report to which objection was made, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, pursuant to Rule 41(b), the court **dismisses without prejudice** this action for failure to prosecute and comply with a court order.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Report, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed in forma pauperis on appeal with the clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

**It is so ordered** this 22nd day of September, 2021.

  
Sam A. Lindsay  
United States District Judge